

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SAMUEL LEE DENARD, a/k/a SAMMIE LEE
DENARD,

Defendant-Appellant.

UNPUBLISHED

July 28, 2000

No. 212990

Oakland Circuit Court

LC No. 98-158180-FC

Before: Markey, P.J., and Gribbs and Griffin, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree murder, MCL 750.316; MSA 28.548, and sentenced to life imprisonment. We affirm.

Defendant argues on appeal that trial court erred by admitting the victim's statement, identifying him as the killer, as a dying declaration because the victim was not conscious of her impending death. There is no merit to this issue.

This Court reviews a trial court's ruling on a motion to suppress evidence for clear error, giving deference to the trial court's ability to assess the credibility of the witnesses before it. MCR 2.613(C); *People v Faucett*, 442 Mich 153, 170; 499 NW2d 764 (1993). The trial court's conclusions of law are reviewed de novo. *People v Snider*, 239 Mich App 393, 406; ___ NW2d ___ (2000).

When a declarant is unavailable as a witness, a statement is not excluded by the hearsay rule if it is made under the belief of impending death:

In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.
[MRE 804(b)(2).]

Here, defendant argues that the victim's statement, identifying defendant as the person who stabbed her, does not fit within this exception because the victim was not conscious of her impending death. We do not agree. Consciousness of death requires that the declarant was, in fact, *in extremis* at the time the statement was made and that she believed she was dying. *People v Siler*, 171 Mich App 246, 251; 429 NW2d 865 (1988). It is not necessary, however, for the declarant to have actually stated that she knew she was dying in order for the statement to be admissible as a dying declaration. *Id.*

In this case, when the police arrived at her house, the victim was having difficulty breathing and was in pain. The victim told a police officer that she was going to die, and that she knew that she was going to die, and she persisted in this belief even when the officer tried to assure her that she was not dying. The victim also told the officer that she did not want to die and that she wanted help. The victim clearly identified defendant as the person who had stabbed her. Shortly after arriving at the hospital, the victim died of the stab wounds. The trial court did not err in finding that the victim was conscious of her impending death under these circumstances.

Defendant also argues that there was insufficient evidence of premeditation and deliberation. We do not agree.

In reviewing sufficiency of evidence claims, this Court must determine if the evidence was sufficient to justify a rational trier of fact in finding guilt beyond a reasonable doubt. In doing so, this Court must view the evidence in a light most favorable to the prosecution. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999). In order to convict a defendant of first-degree premeditated murder, the prosecution must prove that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate. *People v Kelly*, 231 Mich App 627, 642; 588 NW2d 480 (1998). Premeditation and deliberation require sufficient time to allow the defendant to take a second look. *Id.* The elements of premeditation and deliberation may be inferred from the circumstances surrounding the killing. *People v Plummer*, 229 Mich App 293, 300; 581 NW2d 753 (1998). Factors that may be considered to establish premeditation are the previous relationship between the defendant and the victim, the defendant's actions before and after the crime, and the circumstances of the killing itself, including the weapon used and the location of the wounds. *Id.*

In this case, the evidence showed that defendant and the victim had been involved in a dating relationship until the victim reconciled with her husband not long before the killing. A witness testified that defendant came to the victim's house shortly before the killing and, when he learned that the victim was not home, defendant waited for a while on her porch before he disappeared from sight. There was evidence that defendant carried a knife and was frequently seen cleaning his nails with it. The victim was stabbed numerous times, with six severe wounds and multiple shallow wounds. Two of the severe stab wounds were on the victim's back. Shortly after the time of the stabbing, defendant appeared at the home where he had been staying with blood on his pants. Defendant told a woman that he had killed the victim and threatened to kill the woman, too, if she told anyone. Then defendant got into a bathtub full of water with his clothes on, washed off the blood, and left the house in wet clothing.

Defendant fled and went to Texas, where he changed his name. He was not found until more than twenty-four years later. We agree with the trial court that there was sufficient circumstantial evidence in this case to support a finding of premeditation and deliberation.

Affirmed.

/s/ Jane E. Markey

/s/ Roman S. Gibbs

/s/ Richard Allen Griffin